lets. Any well-informed landlord would know of these trade practices.

In these circumstances, effect must be given to these consignment arrangements and no landlord can be heard to say that they had let their premises in the knowledge or expectation that they could levy distress on the goods of these consignors. I find it is not at all realistic or legitimate in the interest of the trade in all the circumstances to infer that the defendants were the reputed owners of the claimants' goods.

Finally, the plaintiffs contend that the claimants were out of time in filing their application contrary to Order 75 rule 5(1) of the Rules of Supreme Court 1970. I propose to excuse the short delay.

There will therefore be an order in terms of prayers 1 and 2 of the claimants' application. Their goods are released. The plaintiffs are ordered to pay the costs of the claimants and defendants.

Order accordingly.

Solicitors: *Tang & Tan; Allen & Gledhill; Chor Pee & Co.*

MALAYSIAN REPORTS

SIVANENDRAN S/O V. MARKANDOO & ANOR. v. DR. MAHENDRAN A/L V. MARKANDOO

[S.C. (Seah, Hashim Yeop A. Sani & Syed Agil Barakbah S.C.JJ.) 24 March 1988]

[Kuala Lumpur – Supreme Court Civil Appeal No. 429 of 1986]

Civil Procedure – Probate action – Application for interlocutory injunction – Strong prima facie case to be shown against administrators – R.H.C. 1980, O. 71 & O. 72.

Succession – Probate and administration – Probate action – Necessity to comply with O. 71 and O. 72 of R.H.C. 1980.

In this case, the respondent brought an action against the administrator and administratrix of his deceased father's estate. After issuing the writ, he took out a summons applying for a interlocutory order against the administrator and administratrix of the estate and for the appointment of a receiver and other ancillary relief. The learned judge of the High Court made the order in terms. The appellants, the administrator and administratrix of the estate, appealed.

Held, allowing the appeal: (1) probate actions, whether contentious or non-contentious, should comply with Orders 71 and 72 of the Rules of the High Court 1980;

(2) a strong *prima facie* case is required to induce a court to grant an interlocutory injunction against an administrator or administratrix of an estate and thereby displacing his/her authority. There must be some evidence of actual misconduct or fraud or immediate danger of loss, for the court is reluctant to interfere with the work of an administrator or administratrix except in special circumstances;

(3) in this case, a strong *prima facie* case had not been made out against the appellants and therefore the appeal must be allowed and the interlocutory injunction and the appointment of the receiver set aside.

Case referred to:

(1) *American Cyanamid* v. *Ethicon Ltd.* [1975] A.C. 396 (refd).

G. Sri Ram (*S. Kanawagi* with him) for the appellants.

Raja Abdul Aziz Addruse (*Dennis Appaduray* with him) for the respondent.

Cur. Adv. Vult.

Seah S.C.J. (delivering the judgment of the court): For the purpose of this appeal, we would regard the writ taken out by the plaintiff, Dr. Mahendran a/l V. Markandoo (the respondent herein), as probate action albeit the procedure laid down in Order 72 of the Rules of the High Court 1980 has not been complied with. We would like

to emphasize that probate actions, whether contentious or non-contentious, should comply with Order 71 and Order 72 of the Rules of the High Court 1980.

After issuing the writ in December 1985, the respondent took out a summons in May 1986 applying for an interlocutory injunction against the administrator and administratrix of his deceased father's estate, appointment of a receiver and other ancillary relief. The learned judge made the order in terms.

In granting the interlocutory injunction, the learned judge adopted the test propounded by Lord Diplock in *American Cyanamid Co.* v. *Ethicon Ltd.*[1] that the pleadings have raised a number of serious questions to be tried. Whilst this test may be valid in ordinary civil proceedings, it is submitted by learned counsel for the administrator and administratrix (hereinafter referred to as the appellants) that it is not a proper test to be adopted in probate actions, inasmuch as the administrator and/or administratrix is appointed by the court and subject to the control of the court. He argues that a higher test ought to be used. Learned counsel for the respondent seems to agree with this submission. In our judgment, a strong *prima facie* case is required to induce a court to grant an interlocutory injunction against an administrator or administratrix and thereby displacing his/her authority. There must be some evidence of actual misconduct or fraud and immediate danger of loss, for the court is reluctant to interfere with the work of an administrator or administratrix except in special circumstances.

Applying this higher standard of test to the facts of this case, it is plain that the learned judge had exercised her judicial discretion based on the wrong principle. Learned counsel for the respondent had contended that although the learned judge had not applied the test correctly, there was nevertheless ample affidavit evidence to support that a strong *prima facie* case had been made out against the appellants and that the learned judge was quite justified in granting the interlocutory injunction and appointing a receiver to manage the estate of the deceased. This contention was disputed by learned counsel for the appellants.

We have carefully read and considered the affidavits filed herein by the respective parties to these proceedings. We are unable to agree with the submission of learned counsel for the respondent that a strong *prima facie* case had been made out against the appellants. True, there were a number of allegations of mismanagement and other acts of impropriety made by the respondent but they were strongly denied by the appellants. On the other hand, there was the claim of the appellants that the administration of the deceased's estate had already been completed some years ago in November 1979.

For the above reasons, we allow the appeal and set aside the interlocutory injunction and the appointment of a receiver made by the learned judge on 29 September 1986, and order an early trial of this action instead. We would award to the appellants costs in this court only to be taxed. The deposit shall be refunded to the appellants.

Appeal allowed.

Solicitors: *Khana & Co.; Sidek, Zubir, Sulaiman, Nadzir & Partners.*

HOO SEE SEN & ANOR. v. PUBLIC BANK BHD. & ANOR.

[S.C. (Salleh Abas L.P., Abdul Hamid C.J. (Malaya) and Lee Hun Hoe C.J. (Borneo) 8 February & 17 March 1988]

[Kuala Lumpur – Supreme Court Civil Appeal No. 335 of 1987]

Contract – Building contract – Payment of balance of purchase price – Application for injunction to restrain payment by bank from which loan was obtained – Liquidated damages claimed exceeding amount due for balance of purchase price – Deed of assignment – Interpretation of.

In this case, the appellants had purchased a two-storey link house to be constructed by the second respondent for $145,000. The appellants and the second respondent entered into a purchase agreement under which vacant possession of the house was to be given within 24 months from the date of payment of the booking fee. The house was not completed and no delivery had taken place. The second respondent was therefore liable to pay liquidated damages to the appellants.

To finance the project, the appellants obtained a loan of $100,000 from the first respondent and assigned the benefits under the sale and purchase agreement to the first respondent as security for the loan. After taking the assignment, the first respondent gave an undertaking to the second respondent that it would pay any monies due under the sale and purchase agreement. In this case, there was a balance of the purchase price unpaid.

The appellants sued the first respondent for an injunction to restrain it from paying the second respondent the